



CrI.M.P.No.672 of 2023 in CrI.A.No.57 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2023

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

CrI.M.P.No.672 of 2023
in CrI.A.No.57 of 2023

Silambarasan

... Petitioner

Vs.

State rep by
The Inspector of Police,
Dharmapuri Police Station,
Dharmapuri District.
(Crime No.346/2019)

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C., to suspend the sentence and conviction imposed against the appellant by judgment dated 27.09.2022 in S.C.No.2 of 2021 on the file of the learned Additional District and Sessions Judge, Dharmapuri and enlarge the petitioner on bail till the disposal of the above Criminal Appeal.

For Petitioner : Mr.M.Mohamed Riyaz
For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed in the judgment, dated 27.09.2022 in S.C.No.2 of 2021 by the learned Additional Sessions Judge, Dharmapuri (trial Court) and enlarge



him on bail pending disposal of the criminal appeal.

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2.The petitioner/A2 was convicted by the trial Court for offence under Section 392 of IPC and sentenced to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.4,000/-, in default to undergo three months Rigorous Imprisonment. Similarly, A1 was convicted for offence under Section 392 r/w 397 of IPC and sentenced to undergo eight years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default to undergo three months Rigorous Imprisonment. Challenging the conviction and sentence of the trial Court, the petitioner/A2 preferred an appeal and the Suspension of Sentence.

3.The case of the prosecution is that the defacto complainant/PW1 is residing at Indur village, Pennagaram main road, Dharmapuri and, is working as Software Engineer in TCS at Bangalore. A1, the petitioner/A2 along with another person, a Juvenile are friends and they are rowdy elements. On 07.06.2019, at about 11.45 p.m., at Krishnagiri Pennagaram bridge when the defacto complainant was waiting for bus to go to Indur village at Pennagaram four road, A1, the petitioner/A2 and Juvenile came



there in Bajaj Platina motorcycle bearing registration No.TN 24 AQ 2351

and picked up the defacto complainant under the pretext of dropping him at Indur village and took him to the forest area where A1, the petitioner/A2 and Juvenile put the defacto complainant in instant fear of death. A1 brandished a pen knife and kept the same on the neck of the defacto complainant and committed robbery of gold chain, gold ring, IPAD AIR 2 and cash of Rs.6,000/-. The Juvenile caught hold of the defacto complainant facilitating the petitioner and A1 to commit the offence. Thereafter, the defacto complainant was beaten with metal water bottle on his head by demanding further amount and took him to SBI ATM at Kumarasamypettai and withdrew Rs.10,000/- using the ATM card of the defacto complainant. Thereafter, the defacto complainant went to the house and informed the incident to his wife/PW2 and brother/PW3, took treatment at Government Hospital, Dharmapuri, lodged the complaint to the respondent Police. The respondent Police registered the FIR (Ex.P12), conducted investigation, examined the witnesses, collected the Material Objects (MO1 to MO5) on the confession of the accused. On conclusion of investigation, filed the charge sheet before the trial Court.



4.Initially, the charge sheet filed before the Judicial Magistrate Court

No.I, Dharmapuri and thereafter, committed to the trial Court and renumbered as S.C.No.2 of 2021.

5.During trial, 12 witnesses examined as PW1 to PW12 and 18 documents marked as Exs.P1 to P18 and 5 Material Objects marked as MO1 to MO5. On the side of the defence, no witness examined and no document marked. The trial Court on conclusion of the trial, rendered the judgment of conviction against the petitioner and A1 as stated above.

6.The learned counsel appearing for the petitioner submitted that the petitioner is an ITI student, he has been arrayed as A2 in this case. The case projected by the prosecution would not sustain the scrutiny of law. The admitted case of the prosecution is that the petitioner, A1 and Juvenile are all total strangers and the defacto complainant was unable to identify them immediately. In such circumstances, no Test Identification Parade conducted and further the case proceeds that the defacto complainant was forcibly kidnapped in a motorcycle to ATM Centre and cash was withdrawn



by the petitioner and A1. In such being so, neither ATM withdrawal slip nor CCTV footage seized, produced during trial. He further submitted that the genesis of the case itself is doubtful. The defacto complainant/PW1 states that he went to the Police station, lodged the complaint and thereafter, went to the Government Hospital, Dharmapuri for treatment. The wife/PW2 and brother/PW3 of the defacto complainant stated that PW1 had come to home, thereafter, he took sometime for reconcile to reality, thereafter, on their advice, he took treatment at Government Hospital, Dharmapuri and complaint was lodged to the respondent Police. No one from the Government Hospital, Dharmapuri examined and no medical records produced during trial.

7.He further submitted that the recovery in this case is highly doubtful. PW6, the Village Administrative Officer and PW7, local vendor are projected as witnesses for confession and recovery of material objects. PW7 admits that the material objects, namely, MO1 and MO2 already available in the respondent Police station and then, he signed the documents. Hence, the recovery is doubtful. Thus, the foundational aspects



and the recovery in this case are highly doubtful. He further submitted that the petitioner is a college going student who is in 20's (age). The prolonged incarceration of seven years would completely destroy his future career. Hence, he prayed for Suspension of Sentence and bail.

8. On the other hand, the learned Additional Public Prosecutor appearing for the respondent Police strongly opposed this petition and submitted that the defacto complainant is an Engineering graduate and, is a physically challenged person. On the fateful day, the defacto complainant was waiting for a bus near the forest area. Taking advantage of his loneliness and also his physical condition, the petitioner along with other accused/A1 had gone near the defacto complainant, projected themselves as though they also hail from Indur village and took him on the pretext that they will leave him in his house. Believing them, the defacto complainant had gone in their two wheeler, they took him in an isolated place. A1 brandished a pen knife and put him a fear of death, the Juvenile caught hold of him, the petitioner/A2 beaten him with the metal water bottle and thereafter, they snatched the gold chain, gold ring, IPAD AIR 2 and cash of



Rs.6,000/- . Not stopping with that, they took the defacto complainant in a two wheeler to Lakshmi Vilas Bank ATM where the watchmen informed no cash, thereafter, they had gone to another ATM, withdraw cash of Rs.10,000/- and let him off. Thereafter, the defacto complainant went to home, took sometime to reconcile to the reality and thereafter, on the advice of PW2 and PW3, he lodged the complaint (Ex.P1) to the respondent Police. The respondent Police on the complaint of the defacto complainant, registered FIR (Ex.P12), visited the scene of occurrence, prepared Mahazar, examined the witnesses, arrested the accused, on the confession of the accused, recovered MO1, MO2 and other articles as material objects and produced the accused for remand. On conclusion of investigation, filed the charge sheet before the trial Court. The trial Court on production of evidence and materials, rightly convicted the petitioner and other accused. He fairly submitted that there is no reason or explanation by the defacto complainant with regard to the recovery. He further submitted that the petitioner is an ITI student.



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9.Considering the submissions and on perusal of the materials, it is seen that with regard to the defacto complainant taking treatment in the hospital, there is no medical records produced during trial by the prosecution. The identification of the petitioner and other accused is in the Police station as stated by the defacto complainant. The recovery is also doubtful in view of the evidence of PW7. When the foundation itself became shaky, thereafter for other reasons convicting the petitioner, is not proper and unsustainable.

10.Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and the petitioner is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the trial Court.

11.The petitioner shall appear before the Trial Court once in three months i.e., from the month of December 2023 at 10.30 a.m., till the disposal of the appeal and if he is not able to appear before the Trial Court on that day, he shall make arrangements to file an application under Section



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317 Cr.P.C. and shall appear before the Trial Court on any other day in lieu of the date of his absence as directed by the Trial Court.

12. Accordingly, this Criminal Miscellaneous Petition is ordered.

06.11.2023

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To

1. The Additional District and Sessions Court,
Dharmapuri.
2. The Inspector of Police,
Dharmapuri Police Station,
Dharmapuri District.
3. The Superintendent,
Central Prison, Vellore.
4. The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR., J.

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